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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/966,288 | 10/01/2001 | Koji Maeda | Q66472 | 4172 |

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EXAMINER

LEO, LEONARD R

ART UNIT PAPER NUMBER

3753

DATE MAILED: 12/12/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/966,288

Applicant(s)

MAEDA ET AL.

Examiner

Leonard R. Leo

Art Unit

3753

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 November 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☒ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1, 7 and 39-42.

Claim(s) withdrawn from consideration: 2-6 and 8-37.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____



Leonard R. Leo
Primary Examiner
Art Unit: 3753

Continuation of 2. NOTE:

The amendment to the specification is new matter. Although the thickness of the plate is presented in millimeters, the diameter and chamfer could be in any unit of measure. One of ordinary skill in the art might assume the remainder of the dimensions are in terms of millimeters. However, the specification does not provide an adequate written description of the invention.

Applicants' remarks with respect to the nozzles are not persuasive. It is inconsistent for applicants to rely upon the expertise of the person having ordinary skill in the art with respect to the specification above, while ignoring the expertise of the person having ordinary skill in the art of nozzles. A person having ordinary skill in the art of heat exchangers has fundamental knowledge of thermodynamics, fluid dynamics, statics, material science and other college engineering basics. It is, therefore, surprising that one versed in fluid dynamics is unfamiliar with spray nozzles having a diverging outlet portion as evidenced by the spray nozzle 22 of Johnson. See MPEP 2131.01. Thus, the spray nozzle of Tsubouchi et al as evidenced by Johnson meets the claimed limitations structurally, wherein the elected species of the "means plus function" recitation are drawn to nozzles with diverging portions of Figure 6B. Therefore, in this respect, applicants' Webster's Dictionary does not fully encompass the knowledge of the person having ordinary skill in the art of heat exchange. An engineering dictionary would doubtlessly provide a more adequate technical definition.